

REMARKS

Claims 1, 5, 7, 9-10, 13-14, 18, 20, 22-23, 26, 29, 31-33, 36-38, 41, 43, 45-46, 49-56 are currently pending. Claims 52 and 58 have been withdrawn from consideration by the Examiner. Claims 57, 65-66, 68-69, 71 and 73-74 have been canceled. Claims 1, 13, 26, 37 and 49 have been amended.

Claim 1 has been amended to recite that each second loop containing section is alternately joined to longitudinally neighboring first loop containing sections, forming cells that each consist essentially of one loop of the first loop containing section and three loops of the second loop containing section. Claim 13 has been amended to recite that each second circumferential band is alternately joined to longitudinally neighboring first circumferential bands, forming cells that each consist essentially of one loop of the first circumferential band and three loops of the second circumferential band. Claim 26 has been amended to recite a stent consisting essentially of a plurality of radially supporting generally sinusoidal bands wherein each loop of the generally sinusoidal bands that faces an adjacent band is connected to two flexible connectors, each flexible connector having a loop between the adjacent bands, to form a plurality of uniformly distributed cells. Claim 37 has been amended to recite that the cells formed by the connection of first and second circumferential bands each consist essentially of one loop of the first circumferential band and three loops of the second circumferential band. Support for these amendments is found throughout the specification, including specifically paragraphs [0067] - [0068] and Figures 17A - 17F.

Claim 49 has been amended to recite that each member described thereunder have a substantially linear portion between the curved portion at either end. Support for

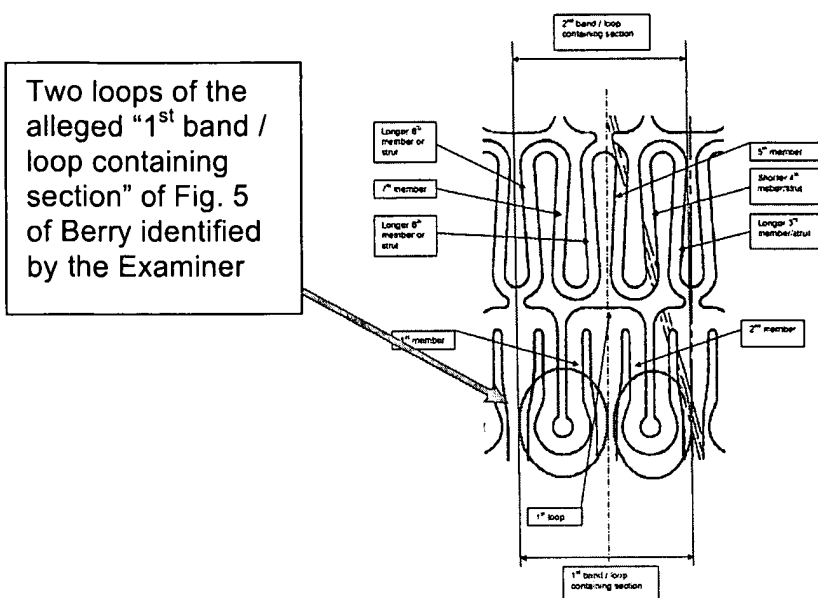
this amendment is found throughout the specification, including specifically paragraph [0066] and Figures 17A - 17F. Applicant reserves the right to request reentry of withdrawn claims 52 and 58 once generic claim 49 is allowed.

No new matter is introduced by these amendments and the amendments are supported by the instant specification.

Response to Rejection Under 35 U.S.C. §102(e) Based on Berry

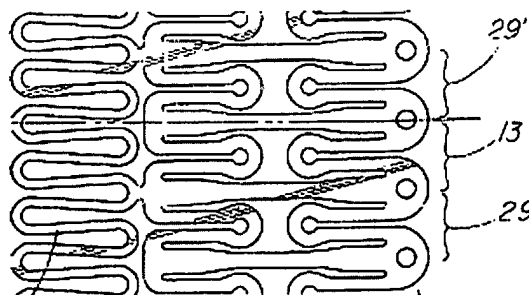
Claims 1, 5, 7, 9-10, 13-14, 18, 20, 22-23, 26, 29, 31-33, 36-38, 41, 43, 45-46, 49-51, 53-57, 59, 61-62, 65-66, 68-69, 71 and 73-74 have been rejected under 35 U.S.C. §102(e) as anticipated by Berry et al. (6,231,598). Applicants respectfully disagree with this rejection.

Independent Claims 1, 13, and 37 recite a stent having alternating first and second loop containing sections or first and second circumferential bands forming cells *consisting essentially of* one loop of the first loop containing section or circumferential band and three loops of the second loop containing section or circumferential band. The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not *materially* affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) (emphasis in original); see also MPEP §2111.03. By contrast, the alleged "cell" identified by the Examiner in Fig. 5 of Berry has at least two loops of the alleged "1st band / loop containing section" identified by the examiner, as illustrated below:



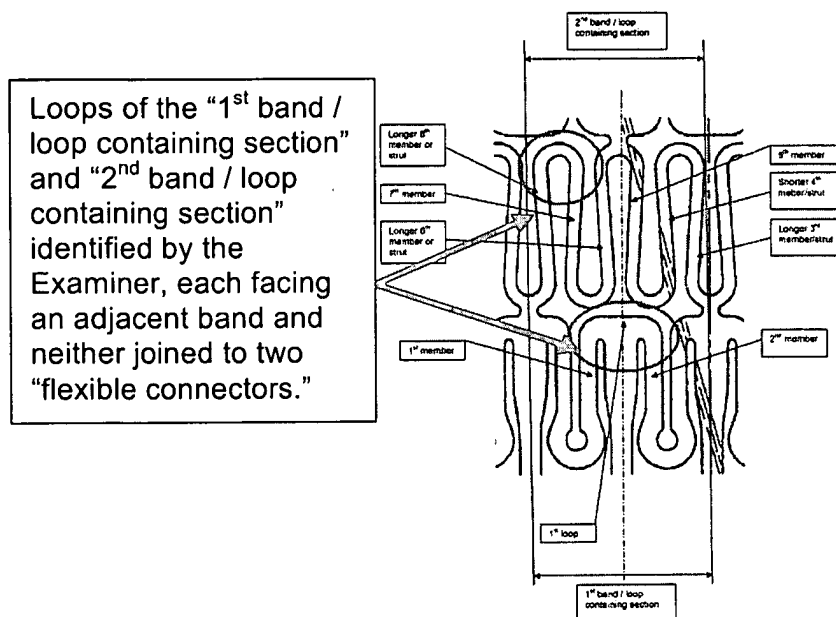
The additional loop of the alleged "1st band / loop containing section" materially affects the basic structure of the stent in a manner that is explicitly excluded under the present claims.

Furthermore, Berry does not provide support for the Examiner's interpretation of a 1:3 loop ratio cell. Neither the specification nor the claims of Berry describe "cells" according to the number of loops per cell, or with reference to the portions of the stent identified by the Examiner. The only reference to "cells" in Berry refers to Cells 13, 29 and 29' formed by the longitudinal segments as highlighted in yellow:



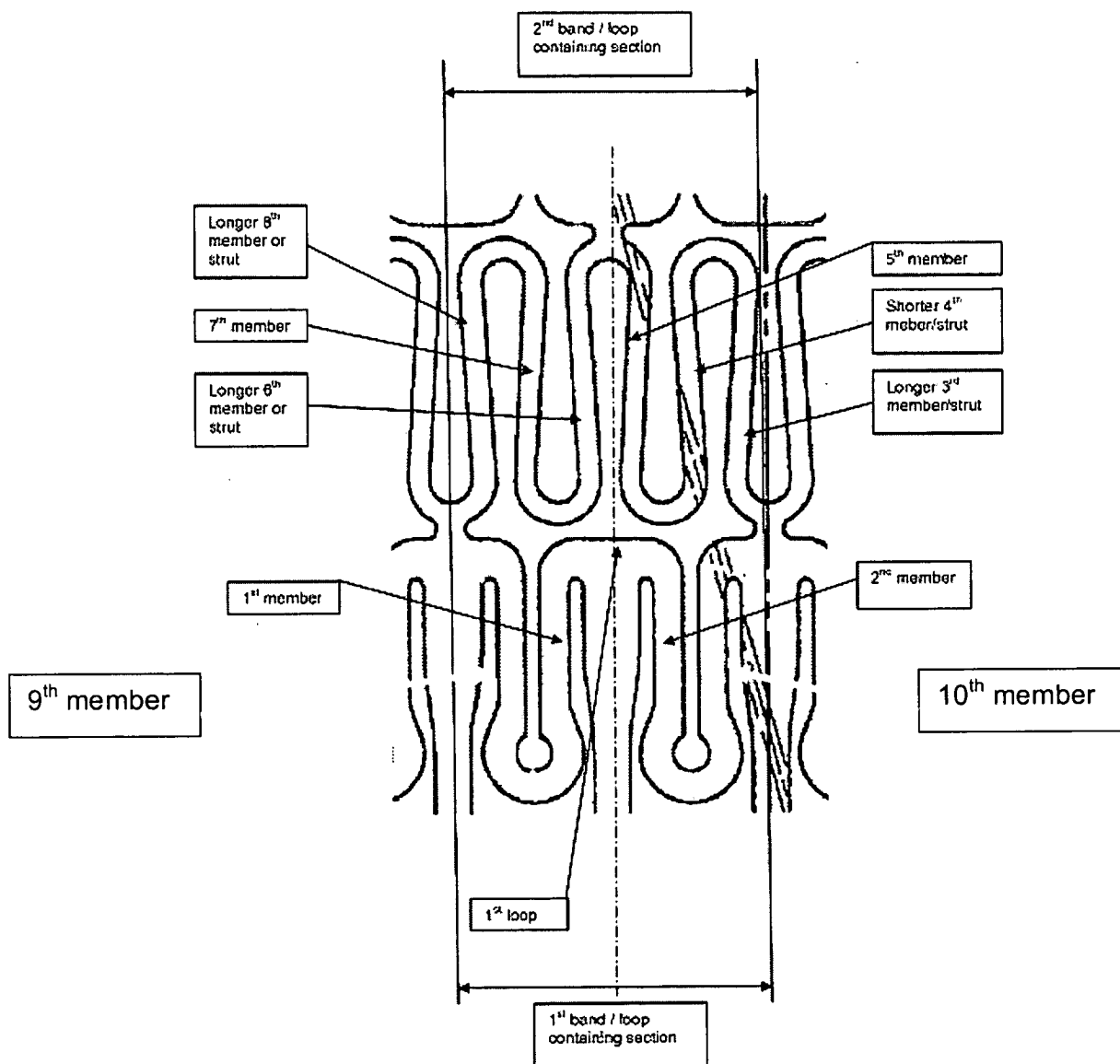
Notably, the “cells” identified in Berry also do not have a 1:3 loop ratio. Because Berry does not teach or suggest a cell *consisting essentially of* one loop of the first loop containing sections or circumferential bands and three loops of the second loop containing sections or circumferential bands, Berry cannot anticipate claims 1, 5, 7, 9-10, 13-14, 18, 20, 22-23, 37-38, 41, 43, 45-46 of the present application.

Independent Claim 26 recites a stent consisting essentially of radially supporting generally sinusoidal bands arranged generally in a circumferential direction and flexible connectors, wherein each loop of the generally sinusoidal bands facing an adjacent band is joined to two flexible connectors, and each flexible connector has a loop between points of connection to two adjacent bands. By contrast, Berry does not teach or suggest a stent formed of “generally sinusoidal bands” wherein each loop of the bands facing an adjacent band is joined to two flexible connectors. Although the Examiner does not identify “generally sinusoidal bands” or “flexible connectors” in Fig. 5 of Berry, both the “1st band / loop containing section” and “2nd band / loop containing section” identified by the Examiner *each* have a loop facing an adjacent band that is *not* joined to two flexible connectors, however defined, as illustrated below.



Because Berry does not teach or suggest a stent *consisting essentially of* generally sinusoidal bands wherein each loop facing an adjacent band is joined to two flexible connectors, Berry cannot anticipate claims 26, 29, 31-33, and 36 of the present application.

Lastly, Claim 49 recites a stent *consisting essentially of* cells formed by an arrangement of eight members, each member having curved portions at either end with a substantially linear portion in between. By contrast, the eight "members" identified by the Examiner on Fig. 5 of Berry, understood as defined in the present claim as having curved portions at either end with a substantially linear portion in between, do not define a cell without further inclusion of additional members that materially affect the basic structure of the stent, as illustrated below.



Moreover, based on the additional “members” present in the stent taught by Berry, the “second end of [the] eighth member” is not connected to the “curved portion of [the] second end of [the] first member,” as required by Claim 49. Because Berry does not teach or suggest a stent having cells consisting essentially of eight members having

curved end portions with substantially linear portions in between, Berry cannot anticipate claims 49-51, 53-57, 59, 61-62 of the present application.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §102(e) as to the present Claims 1, 5, 7, 9-10, 13-14, 18, 20, 22-23, 26, 29, 31-33, 36-38, 41, 43, 45-46, 49-51, 53-57, 59, and 61-62 are respectfully requested for the above reasons.

CONCLUSION

Based on the foregoing amendments and remarks, applicant respectfully requests reconsideration and withdrawal of the rejections of the pending claims and requests allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-4387, Order No. 92077.003.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4387, Order No. 92077.003.

Respectfully submitted,
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